

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2009CF1280
)	EEOC NO.:	21BA90203
RAMONA ROGERS)	ALS NO.:	09-0698
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Rozanne Ronen, and Nabi Fakroddin, upon Ramona Rogers's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF1280; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On October 30, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that her former employer Mercy Hospital & Medical Center, ("Employer"), discharged her in retaliation for having opposed unlawful discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act ("Act"). On October 30, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 3, 2009, the Petitioner filed a timely Request.
2. The Employer hired the Petitioner on September 30, 2002 as a Clerk Coordinator. The Petitioner's immediate supervisor was the Nursing Director-Telemetry/CCU ("Director").
3. In April 2008, the Petitioner complained to the Employee Relations Manager ("Manager") that the Director was discriminating against her because of her race. The Petitioner complained about race discrimination in January 2008, February 2008, and June 2008.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On July 21, 2008, one of the Employer's staff members witnessed the Petitioner engage in a verbal altercation with a co-worker, and reported the incident to the Employer's management personnel.
5. On August 6, 2008, the Employer discharged the Petitioner for engaging in inappropriate behavior in violation of its Standard of Conduct Policy.
6. The Petitioner acknowledges having been disciplined by the Employer for various infractions prior to August 2008. The Petitioner acknowledges she received a verbal counseling in 2003; a verbal warning in 2005; a written warning in March 2008; and a suspension on May 29, 2008.
7. However, the Petitioner contends the Employer actually discharged her as retaliation for having opposed unlawful discrimination in January, February, and June 2008.
8. In her Request, the Petitioner states that the Respondent failed to contact several of her witnesses; that two of her witnesses were not questioned by the Respondent's investigator during the fact-finding conference, and that the investigator did not permit the Petitioner to comment about her May 29, 2008 suspension. The Petitioner contends that her complaints about various incidents in the workplace were never addressed by the Employer, but that any complaints against the Petitioner resulted in her being disciplined and ultimately discharged. The Petitioner says she was terminated for the July 2008 incident without being given an opportunity to present her side of the story to the Employer.
9. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence because there was no substantial evidence the Employer's stated reason for its actions was a pretext for retaliation. The Respondent determined that the Employer had also discharged another employee in September 2007 for unprofessional behavior in violation of the Policy, and that this employee had not engaged in protected activity. Thus there was no substantial evidence a person outside the Petitioner's protected class had been treated more favorably under similar circumstances.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.).

The Commission finds that the Employer articulated a non-retaliatory reason for discharging the Petitioner, and there is no substantial evidence that this articulated reason was a pretext for retaliation. Pretext can be shown through direct or indirect evidence. See Matter of: Vidal and St. Mary's Hospital of East Louis, Inc., 1992 WL 721812, * 2, Charge No. 1985SF0343, October 05, 1992. Direct evidence of pretext is evidence which demonstrates that the Employer was more likely motivated by a discriminatory or retaliatory purpose. See Id. When there is no direct evidence, indirect evidence may be used, in which case the indirect evidence must establish that the Employer's articulated explanation for taking the adverse action is unworthy of credence. See Id.

In this case, no direct evidence of pretext was presented. Based on the indirect evidence presented, the Commission concludes there is no substantial evidence that the Employer's articulated non-retaliatory reason for discharging the Petitioner is unworthy of credence and therefore pretextual.

The Petitioner's case does not present a scenario where she engaged in a protected activity and then was immediately thereafter subjected to an adverse action by the Employer. Rather, the Petitioner had been progressively disciplined multiple times for various infractions in the months prior to her discharge. The Petitioner was discharged approximately two (2) weeks after becoming involved in a verbal altercation with a co-worker, which was the Petitioner's third incident warranting disciplinary action in 2008. Thus, the adverse action followed almost immediately after this third act of misconduct.

Based on the fact that the Petitioner had a documented history of progressive discipline in the months prior to her discharge; that the Employer was acting pursuant to a complaint from one of its employees about the Petitioner's conduct; and that the Employer had previously discharged another employee who had not opposed discrimination for the same reason it discharged the Petitioner, there is no substantial evidence that the Employer's stated reason for discharging the Petitioner was unworthy of credence.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Page 4 of 4

In the Matter of the Request for Review by: Ramona Rogers

Mercy Hospital & Medical Center as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 9th day of June 2010.

Commissioner Munir Muhammad

Commissioner Nabi Fakroddin

Commissioner Rozanne Ronen